UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DENNY'S, INCORPORATED, IN ITS FIDUCIARY CAPACITY AS PLAN ADMINISTRATOR; DENNY'S, INCORPORATED VACATION PAY PLAN; ANDREW F. GREEN, IN HIS CAPACITY AS TRUSTEE OF THE DENNY'S INCORPORATED EMPLOYEE BENEFITS TRUST; DENNY'S INCORPORATED EMPLOYEE BENEFITS TRUST, PLAINTIFFS-APPELLANTS,

v.

CHUCK CAKE, IN HIS CAPACITY AS ACTING DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; ARTHUR LUJAN, IN HIS CAPACITY AS THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, DEFENDANTS-APPELLEES.

AMERICAN ASSOCIATION OF RETIRED PERSONS, AMICUS SUPPORTING APPELLEE.

No. 03-1326.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg
Henry M. Herlong, Jr., District Judge
(CA-02-2968-7-20)

Argued: January 20, 2004.
Decided: April 12, 2004.

Before WIDENER, WILLIAMS, and MOTZ, Circuit Judges.

Vacated and remanded by published opinion. Judge Motz wrote the opinion, in which Judge Widener joined. Judge Williams wrote a concurring opinion.

OPINION

DIANA GRIBBON MOTZ, Circuit Judge:

Upon notification from California officials that its vacation pay practices violated state labor law, Denny's, Inc. brought this action in federal court in South Carolina. Denny's asked the court to declare that the Employee Retirement Income Security Act (ERISA) preempted these state-law claims, and enjoin the California Labor Commissioner from applying the state law against Denny's. Shortly thereafter, the Commissioner sued Denny's in state court in California seeking to enforce the state law. Several months later, the district court dismissed this action, finding it lacked personal jurisdiction over the Commissioner. We believe that the court did have jurisdiction, but conclude that the Anti-Injunction Act bars all of the relief that Denny's seeks. Accordingly, we vacate the judgment of the district court and remand for entry of an order dismissing the complaint for failure to state a claim upon which relief can be granted.

I.

Denny's, a restaurant chain with its principal place of business in South Carolina, maintains the Denny's, Inc. Vacation Plan ("the Plan") and the Denny's, Inc. Employee Benefits Trust ("the Trust") for the stated purpose of providing vacation benefits to eligible employees. The Plan provides that salaried and hourly employees cannot use vacation benefit days and will not be paid any vacation benefits upon termination of their employment until and unless they have completed, respectively, six months or one year of continuous employment with Denny's.

On July 11, 2002, Denny's received a letter from an attorney at the California Department of Industrial Relations. The purpose of the letter was "to come to a global resolution" of issues raised by claims of former Denny's employees filed with the California Labor Commissioner. The attorney explained that Denny's policy requiring forfeiture of vacation benefits when employees leave prior to six months or one year of employment violated Cal. Lab. Code § 227.3. That statute provides that when "an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages" and, further, "that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination." § 227.3.

The California attorney noted that the Department had concluded that "Denny's method of funding its vacation pay plan constituted a payroll practice and the plan is not therefore an ERISA plan which preempts state enforcement laws." The attorney recounted prior discussions and litigation between the parties on this issue, including a state court's refusal to grant summary judgment to Denny's on its pre-emption defense. Given the numerous claims filed with the Department, the attorney proposed that Denny's meet with the Commissioner and discuss an "amicable resolution" to avoid "the time and expense of litigation." Otherwise, the Department would have "to file an action against Denny's to finally resolve this issue."

In response, on September 6, 2002, Denny's[1] filed this action for declaratory and injunctive relief in federal court in South Carolina against the Commissioner and the director of the Department of Industrial Relations (collectively, "Commissioner"). Denny's sought: (1) a declaration that the

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[1] We refer within to all plaintiffs/appellants—Denny's (in its fiduciary capacity as Plan administrator), the Plan, the Trust, and Andrew F. Green, in his capacity as trustee of the Trust—collectively as "Denny's."

Plan and Trust constitute an ERISA plan; (2) a declaration that "ERISA preempts the California statutes, regulations, and any action or decision" of the Commissioner "having the effect of law that [the Commissioner] seek[s] to enforce against [Denny's] based upon California law"; and (3) "[p]reliminary and permanent injunctions barring [the Commissioner] from taking any action to enforce California law against [Denny's] with regard to the Plan and the Trust."

Three weeks later, the Commissioner filed a complaint against Denny's in California state court, for damages and injunctive relief. The Commissioner asked the state court to award it unpaid vacation wages and waiting time penalties pursuant to Cal. Lab. Code § 203, and to order Denny's to "cease and desist from violating" all provisions of the state labor code. In its answer to the Commissioner's state court lawsuit, Denny's alleged ERISA preemption as an affirmative defense.

The Commissioner then moved to dismiss the present action, contending that a federal district court in South Carolina lacked personal jurisdiction over the California officials, notwithstanding ERISA's nationwide service of process provision, 29 U.S.C. § 1132(e)(2) (2000). Alternatively, the Commissioner contended that the Anti-Injunction Act, 28 U.S.C. § 2283 (2000) and abstention based on *Younger v. Harris*, 401 U.S. 37 (1971), compelled dismissal. On February 27, 2003, the district court granted the Commissioner's motion, concluding that it had no personal jurisdiction over the Commissioner. *Denny's, Inc. v. Cake*, 247 F. Supp. 2d 813 (D.S.C. 2003).

II.

We turn first to the question of whether the district court could exercise personal jurisdiction over the Commissioner under 29 U.S.C. § 1132(e)(2). In the case at

hand the answer to that question hinges on the court's subject matter jurisdiction under 29 U.S.C. § 1132(a)(3).

ERISA contains a nationwide service of process provision that permits an ERISA enforcement action to be brought in federal court in a district "where the plan is administered" and process to be "served in any other district where a defendant resides or may be found." § 1132(e)(2). Accordingly, since the Plan is administered in Spartanburg, South Carolina, and the Commissioner has been served in California, a district court sitting in South Carolina would have personal jurisdiction over the Commissioner under § 1132(e)(2) *if* this is a proper ERISA enforcement action—that is, if the court had subject matter jurisdiction over the action under § 1132(a)(3).[2] Section 1132(a)(3) provides that "a participant, beneficiary, or fiduciary" may bring an ERISA enforcement action in federal court:

> (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) *to enforce any provisions of this subchapter* or the terms of the plan[.]

29 U.S.C. § 1132(a)(3) (emphasis added).

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[2] This, of course, assumes that the assertion of personal jurisdiction over the Commissioner would satisfy Fifth Amendment due process requirements. The Commissioner tentatively argues that it would not. Brief of Appellee at 25 n.9. But the Commissioner has not demonstrated that the district court's assertion of personal jurisdiction over him would result in "such extreme inconvenience or unfairness as would outweigh the congressionally articulated policy" evidenced by a nationwide service of process provision. *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 627 (4th Cir. 1997). Nor has the Commissioner suggested any persuasive reason *why* the *ESAB* standard, formulated in the context of the RICO nationwide service of process provision, does not apply here. Accordingly, we reject this argument.

Section 1132(a)(3)(B) thus permits an ERISA fiduciary to bring an action to "enforce any provisions of this subchapter." *Id.* Indisputably, "this subchapter" refers to subchapter I of Chapter 18 of the United States Code, which codified Title I of ERISA and includes 29 U.S.C. §§ 1001-1191. "[T]his subchapter" thus clearly contains ERISA's preemption provision, 29 U.S.C. § 1144. The plain language of § 1132(a)(3)(B) therefore appears to permit an ERISA fiduciary to bring an action to "enforce" § 1144—a "provision of this subchapter."[3]

Indeed, the Supreme Court has expressly stated that "[u]nder § 502(a)(3)(B) of ERISA [§ 1132(a)(3)(B)], a participant, beneficiary or fiduciary of a plan covered by ERISA may bring a declaratory judgment action in federal court to determine whether the plan's trustees may comply with a state [law]." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 26-27 (1983). The Court ultimately rejected the view that a state action brought by the California Franchise Tax Board against an ERISA fiduciary for a declaration that the fiduciary must comply with state law arose under ERISA and so could be removed

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[3] Contrary to Denny's assertions, § 1132(a)(3)(B) does not permit it to bring an action solely to seek a declaration that the Plan is an ERISA plan. Although a holding as to whether ERISA preempts the Commissioner's application of California law would necessarily include a determination as to whether Denny's plan is actually an ERISA plan, a suit to seek *only* a declaration that the Plan is an ERISA plan could not stand on its own. Absent the Commissioner's threat to enforce California law against the Plan and Denny's contention that such enforcement would violate ERISA, no enforcement or potential violation of ERISA or the Plan would be at issue. Thus, as the district court noted, the "crux" of this case is "the issue of preemption." *Denny's*, 247 F. Supp. at 817 n. 6. Because an action seeking only a declaratory judgment that the Plan is an ERISA plan would not enforce or remedy a violation of ERISA or the Plan, it could not be brought under § 1132(a)(3); in fact, such an action would raise no case or controversy. *See* U.S. Const. art. III, § 2, cl. 1; 28 U.S.C. § 2201 (2000) (authorizing federal courts to issue declaratory judgments only "[i]n a case of actual controversy").

to federal court—but *only* because the tax board itself was not an ERISA "participant, beneficiary, or fiduciary," as required by § 1132(a)(3). *Id.* at 27. The Court assumed that the ERISA fiduciary "could have sought an injunction under ERISA against application to it of state regulations that require acts inconsistent with ERISA," but held that the declaratory action by the *State*, not an ERISA participant, beneficiary, or fiduciary, did not "'arise under' federal law" and so could not be removed to federal court. *Id.* at 20.

In short, both the plain language of § 1132(a)(3) and the Supreme Court's interpretation of it seem to compel the conclusion that an ERISA fiduciary, like Denny's,[4] could bring the instant action to "enforce" § 1144 by way of "an injunction ... against application ... of state regulations that require acts inconsistent with ERISA." *Franchise Tax Bd.*, 463 U.S. at 20.

Yet, the district court held that Denny's declaratory and injunctive action based on ERISA's preemption provision, § 1144, did not constitute an action to "enforce" ERISA within the meaning of § 1132(a)(3)(B). *Denny's*, 247 F. Supp. 2d at 820. The court apparently concluded that because Denny's § 1144 preemption defense in the California case would not suffice to provide federal removal jurisdiction over it, the instant action, based on § 1144, could not be brought under § 1132(a)(3). *Id.* at 820-821. But, as

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[4] Like the district court, we presume Denny's is an ERISA fiduciary for purposes of jurisdiction. In doing so, we have not thereby drawn any conclusion as to the merits of Denny's allegation that the Plan is an ERISA plan, which is central to the determination of whether ERISA preempts the Commissioner's application of state law in this case. *See supra* note 3. To the extent that the question of subject matter jurisdiction under § 1132(a)(3) "involves the merits of [this] dispute," we thus follow "the proper course of action," *i.e.* upon "find[ing] that jurisdiction exists," we leave any objections to be dealt with "as a direct attack on the merits of the plaintiff's case." *United States v. North Carolina*, 180 F.3d 574, 580 (4th Cir. 1999) (internal quotation marks and citation omitted).

explained above, neither *Franchise Tax Board* nor the plain language of § 1132(a)(3) provide any basis for treating the present action precisely like one in which a fiduciary seeks removal asserting § 1144 preemption.

We acknowledge that this result may at first seem odd because, just as the present action depends on whether the plaintiff's claim falls within § 1132(a)(3), so too "complete preemption,"[5] which provides a basis for federal removal jurisdiction, depends in the ERISA context upon whether the underlying state law claim falls within § 1132(a). *See, e.g., Sonoco Prods. Co. v. Physicians Health Plan, Inc.*, 338 F.3d 366, 370-71 (4th Cir. 2003). But a court determines "complete preemption" by determining the *plaintiff's* capacity to bring its state law claims under § 1132(a), not the defendant's. *Id.* at 371-72. Thus, the fact that a state court *defendant's* assertion of § 1144 preemption as a defense does not create complete preemption says nothing about whether that defendant could have brought an action to enforce § 1144 preemption as a *plaintiff* in federal court under § 1132(a). In the present case, for instance, the Commissioner could not bring his claims in federal court under § 1132(a) because, like the tax board in *Franchise Tax*

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[5] "Complete preemption" differs from "ordinary" or "conflict" preemption. Conflict preemption arises when a defendant asserts the affirmative defense that a plaintiff's state law claim is preempted by federal law. *Sonoco Products Co. v. Physicians Health Plan, Inc.*, 338 F.3d 366, 370-71 (4th Cir. 2003). Normally, conflict preemption "does not appear on the face of a well-pleaded complaint, and, therefore, does not authorize removal to federal court." *Id.* at 371 (internal quotation marks and citation omitted). By contrast, complete preemption exists when "Congress so completely preempt[s] a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Id.* (internal quotation marks and citation omitted). With complete preemption, removal to federal court is possible because "the plaintiff simply has brought a mislabeled federal claim, which may be asserted under some federal statute." *Id.* (internal quotation marks and citation omitted).

Board, he is not an ERISA participant, beneficiary, or fiduciary; as a result, his state court suit is not completely preempted by Denny's assertion of a preemption defense under § 1144. *Id.* at 372-73. But Denny's, as a fiduciary, does not face the same barrier to bringing the instant § 1132(a)(3) action in federal court.

The district court based its contrary decision almost exclusively on *NGS American, Inc. v. Jefferson*, 218 F.3d 519 (6th Cir. 2000). There the Sixth Circuit held that an ERISA fiduciary's federal suit—seeking a declaration that ERISA preempted a beneficiary's threat to initiate private state court litigation against the fiduciary based on an alleged violation of state law—could not be brought under § 1132(a)(3); *see also Gulf Life Ins. Co. v. Arnold*, 809 F.2d 1520, 1523-24 (11th Cir. 1987) (holding that a fiduciary's declaratory judgment action seeking to determine its liability for benefits claimed by a former employee could not be brought under § 1132(a)(3)).[6] But *Jefferson* involved a fiduciary suing for a declaration that ERISA preempted the threat of a private suit by a beneficiary, while the case at hand involves a very different situation: a fiduciary suing for a declaration that ERISA preempts state authorities from enforcing state law against an ERISA plan. The district court recognized that "the facts of *Jefferson* are easily distinguishable from the facts at hand," but

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[6] In *Gulf Life*, 809 F.2d at 1523, the fiduciary did not request an injunction and the court determined that the requested declaration was not "equitable in nature," and so could not be brought under § 1132(a)(3) for this additional reason. Here, of course, Denny's does seek an injunction and so § 1132(a)(3)(B) relief cannot be denied on that basis. Moreover, the "underlying controversy" here is "equitable" in nature: an effort to force Denny's, via an injunction, to comply with California law. *See Transamerica Occidental Life Ins. Co. v. DiGregorio*, 811 F.2d 1249, 1251 (9th Cir. 1987) (noting that "a particular declaratory judgment draws its equitable or legal substance from the nature of the underlying controversy"). Thus, the declaratory relief sought in this case clearly also qualifies as "appropriate equitable relief" under § 1132(a)(3)(B).

nevertheless concluded that this "distinction does not affect the application of the *Jefferson* Court's reasoning." *Denny's*, 247 F. Supp. 2d at 821.

The *Jefferson* court itself, however, found this difference extremely significant, taking pains to distinguish the case before it, in which the plaintiff challenged "the permissibility of a private cause of action," from earlier Sixth Circuit precedent, *Thiokol Corp. v. Dep't of Treasury*, 987 F.2d 376 (6th Cir. 1993), in which the plaintiff challenged "the enforceability of an existing state regulation." *Jefferson*, 218 F.3d at 529. In *Thiokol*, as here, an ERISA fiduciary sought declaratory and injunctive relief in federal court on the basis of § 1144 preemption. 987 F.2d at 380. The *Thiokol* fiduciary, like Denny's in this case, sought to prevent state authorities from enforcing state law provisions against an asserted ERISA plan. *Id.* at 377-78. The *Thiokol* court unequivocally held that, in these circumstances, the fiduciary could bring a § 1144 preemption claim in federal court under § 1132(a)(3). *Id.* at 380.[7]

In determining whether a case falls within § 1132(a)(3), we agree with the Sixth Circuit: an action based on ERISA preemption brought by a fiduciary *to enjoin a private suit* critically differs from such an action brought by a fiduciary to *prevent the enforcement of a state law against an ERISA plan.* A party's private suit, based on an arguably preempted state law, brought against an ERISA plan, poses no threat to violate § 1144 or any other provision of ERISA

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[7] The Commissioner's attempts to distinguish *Thiokol* do not persuade us. True, *Thiokol* did not involve any question as to personal jurisdiction under § 1132(e)(2), but it clearly did involve whether a federal court had jurisdiction over a § 1144 preemption claim under § 1132(a)(3)—the determinative question for personal jurisdiction here—and the Sixth Circuit unequivocally held that it did. *Thiokol*, 987 F.2d at 380. Moreover, whether the *Thiokol* court properly decided another issue—the applicability of the Tax Injunction Act, 28 U.S.C. § 1341 (2000)—does not affect the correctness of the court's § 1132(a)(3) ruling.

or the plan. *See Jefferson*, 218 F.3d at 529-30. The only "harm" in denying injunctive and declaratory relief to the plan's fiduciary in such a case is to force the fiduciary "to raise its preemption claim in state court, or to seek removal to federal district court." *Id.* at 529. But a state suit to enforce a state law against an ERISA plan may well violate ERISA and the plan. In such a case, the plan's fiduciary faces a Hobson's choice: obey the state law, and risk violating the provisions of the plan (and hence ERISA, 29 U.S.C. § 1104(a)(1)(D)), or disobey the state law and then raise "ERISA preemption as a defense in a state enforcement action" and "risk[] breaking the law." *Id.* In addition to potentially coercing a plan fiduciary into violating plan provisions and ERISA, a state's enforcement of an assertedly preempted state law against an ERISA plan (unlike a private suit based on state law) is arguably itself a "violation" of § 1144—which provides that ERISA "shall supercede any and all State laws." *See, e.g., HMI Mech. Sys., Inc. v. McGowan*, 266 F.3d 142, 149 (2d Cir. 2001) (noting that a state's approach to enforcing a law "violated ERISA preemption standards").

In sum, Denny's declaratory and injunctive action to enforce § 1144 falls within § 1132(a)(3), and so the district court did have personal jurisdiction over the Commissioner under § 1132(e)(2). Therefore, we must vacate its judgment dismissing this action for lack of personal jurisdiction.

III.

Because the district court found it lacked personal jurisdiction over the Commissioner, it did not address the Commissioner's alternative Anti-Injunction Act (hereinafter "the Act") argument. The Commissioner reiterates on appeal that the Act bars a federal court from granting the relief requested by Denny's and so requires dismissal of the case for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.[8]

The Act serves as a "necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts" and "represents Congress' considered judgment as to how to balance the tensions inherent in such a system." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988). Accordingly, "[w]e take seriously the mandate in the Anti-Injunction Act and recognize that for over two hundred years, the Act has helped to define our nation's system of federalism."

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[8] Although Denny's does not specifically request an "injunction to stay proceedings in State court," it does seek to enjoin state officials "from taking any action to enforce California law against it." If granted, this relief amounts to a "stay of proceedings in a State court." *See, e.g. Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970) (finding that the Act "cannot be evaded" by framing an injunction as a restraint on a party rather than directly on the state court). Moreover, when the Act bars an injunction it "also bar[s] the issuance of a declaratory judgment that would have the same effect as an injunction." *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 506 (5th Cir. 1988) (en banc) (internal quotation marks and citation omitted). This is clearly the case here: Denny's request for a declaration that ERISA preempts the enforcement of a California labor law against the Plan has "the same effect" as its request for an injunction to prevent enforcement of that state law against the Plan; both "result in precisely the same interference with and disruption of state proceedings that the long-standing policy limiting injunctions was designed to avoid." *Samuels v. Mackell*, 401 U.S. 66, 72 (1971). Thus, if the Act bars the injunction Denny's has sought, it also bars the declaratory relief it has sought. *See, e.g., Employers Res. Mgmt. Co., Inc. v. Shannon*, 65 F.3d 1126, 1129 (4th Cir. 1995) (holding the Act barred the ERISA fiduciary from injunctive *and* declaratory relief); *see also* 17 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4222, at 503-04 & n.11 (2d ed. 1988 & Supp. 1999) (collecting cases).

Employers Res. Mgmt. Co., Inc. v. Shannon, 65 F.3d 1126, 1130 (4th Cir. 1995).

The Act constitutes "an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions in the Act." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977) (plurality opinion). These three exceptions are injunctions: (1) expressly authorized by statute; (2) necessary to aid the court's jurisdiction; or (3) required to protect or effectuate the court's judgments. *Chick Kam Choo*, 486 U.S. at 146; *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287-88 (1970). None of these exceptions apply here.[9]

Notwithstanding the inapplicability of the only exceptions to the Act recognized by Congress, Denny's contends that the Act does not bar its suit because of a judicial exception created by one of our sister circuits and followed by two others. Specifically, Denny's contends that the Act's prohibition on enjoining "proceedings in state court" does not apply because *when it filed this action requesting injunctive relief* in early September 2002, "there

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[9] Denny's does not contend that the second or third exceptions apply. It does offer a brief and unpersuasive suggestion that "§ 1132(a) of ERISA" constitutes express statutory authorization for an injunction and for this reason "operates as an exception" to the Act. Reply Brief at 10. We explicitly held to the contrary in *Employers Resource Management*, 65 F.3d at 1130-34. Seizing on our statement there that we rejected "the notion that ERISA operates as an automatic exception" to the Act, *id.* at 1132, Denny's contends that we "did not hold that ERISA *never* operates as an exception." Reply Brief at 10 (emphasis in original). Denny's misreads our opinion. Although recognizing a "circuit split" on the question and factually distinguishing the cases taking the opposite view, we firmly aligned ourselves with the "sounder position" of the Third and Fifth Circuits and refused "to broaden the three narrow exceptions" to the Act. *Employers' Res. Mgmt.*, 65 F.3d at 1133-34; *see also Total Plan Servs., Inc. v. Texas Retailers Ass'n, Inc.*, 925 F.2d 142, 144 (5th Cir. 1991); *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170, 1177-78 (3rd Cir. 1989).

were no pending state proceedings, within the meaning of the [Act] or otherwise." Reply Brief at 7.

The Seventh Circuit so held in *Barancik v. Investors Funding Corp.*, 489 F.2d 933, 937 (7th Cir. 1973); *see also Hyde Park Partners, L.P. v. Connolly*, 839 F.2d 837, 842 n.6 (1st Cir. 1988) (dicta); *Nat'l City Lines, Inc. v. LLC Corp.*, 687 F.2d 1122, 1127 (8th Cir. 1982). Other circuits, however, have rejected this judicial exception. *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 885 (5th Cir. 1993) (holding that the Act does apply even if the request for federal injunctive relief is filed first); *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 533 (6th Cir. 1978), *cert. dismissed*, 442 U.S. 925 (1979) (same); *see also Standard Microsystems Corp. v. Texas Instruments*, 916 F.2d 58, 61-62 (2d Cir. 1990) (criticizing the reasoning in *Barancik* and stating that the court had "considerable doubt [about] whether the *Barancik* rule should be adopted in this circuit"); *Nat'l City Lines*, 687 F.2d at 1135 (Arnold, J., dissenting) (explaining that "the mere filing of a motion in a federal court seeking to enjoin state-court proceedings should [not] in and of itself deprive later filed state-court action of the protection of § 2283").

As always, we turn first to the plain language of the statute to determine its meaning. *See Williams v. Taylor*, 529 U.S. 420, 431 (2000). The plain language of the Act clearly and unequivocally prohibits a federal court from granting "an injunction to stay proceedings in a State court." 28 U.S.C. § 2283. Of course, in order for the Act's bar to apply, proceedings in state court must have begun. *See Dombrowski v. Pfister*, 380 U.S. 479, 484 n.2 (1965) (the Act does "not preclude injunctions against the institution of state court proceedings, but only bar[s] stays of suits already instituted"). But nothing in the Act confines its bar to situations in which the federal plaintiff requests

injunctive relief *after* the state suit has been filed. *See Royal Ins. Co.*, 3 F.3d at 885.

Courts must "presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). A court may not disregard the plain language of a statute unless a literal application of the statutory language "would lead to absurd results ... or would thwart the obvious purpose of the statute." *In re Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978) (internal quotation marks and citation omitted). Here literal application of the Act's language would neither thwart its purpose nor produce an absurd result. Quite the contrary, abiding by the statutory language clearly furthers the Act's purpose of avoiding "unseemly conflict between the state and the federal courts." *N.L.R.B. v. Nash-Finch Co.*, 404 U.S. 138, 146 (1971).

Moreover, the Supreme Court has directed that the Act, in particular, "is not a statute conveying a broad general policy for appropriate ad hoc application" but rather is "expressed in a clear-cut prohibition qualified only by specifically defined exceptions." *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 515-16 (1955). Courts are not to "enlarge[]" these "exceptions ... by loose statutory construction." *Atl. Coast Line*, 398 U.S. at 287. Instead, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed ... to finally determine the controversy." *Id.* at 297.

The *Barancik* court acknowledged the Supreme Court directive that the Act "imposes an absolute ban, circumscribing the federal court's power to act unless a case falls within one of the explicit exceptions from its command." *Barancik*, 489 F.2d at 937. It also recognized that "[t]he mere fact that the federal complaint was filed

before the state proceeding was commenced is not sufficient to avoid the statutory bar." *Id.* at 936 (citing *Kline v. Burke Construction Co.*, 260 U.S. 226, 232 (1922)). *But see Nat'l City Lines*, 687 F.2d at 1127 (stating that the Act "is inapplicable when a federal court has first obtained jurisdiction of a matter in controversy by the institution of suit"). Nevertheless, the *Barancik* court concluded that "the mandatory prohibition in § 2283 against injunctions staying state court proceedings does not apply to state actions commenced after a motion for injunctive relief is filed in the federal court." *Barancik*, 489 F.2d at 938.

The *Barancik* court advanced several policy concerns in support of its holding. For example, it worried that "[u]nless the applicability of the statutory bar is determined by the state of the record at the time the motion for an injunction is made, a litigant would have an absolute right to defeat a well-founded motion by taking the very step the federal court was being urged to enjoin." *Id.* at 937. But a federal court can eliminate this problem by issuing a temporary restraining order against the filing of a state court suit while considering a motion for a preliminary injunction seeking such relief. *See Royal*, 3 F.3d at 884; *see also Dombrowski*, 380 U.S. at 484 n.2 (noting that the Act does not prevent a federal court from restraining a party from instituting state proceedings). The *Barancik* court feared that such reliance on temporary restraining orders "might encourage the liberal granting of the kind of protective orders the statute was intended to prevent." *Barancik*, 489 F.2d at 938. However, the basic harm the statute was intended to prevent was not the liberal granting of protective orders, *per se*, but the "needless friction between state and federal courts." *Mitchum v. Foster*, 407 U.S. 225, 233 (1972) (internal quotation marks and citation omitted). Temporarily staying a potential state suit before it is filed so that an anti-suit injunction can be considered

would seemingly create significantly less friction than allowing a state suit to be commenced, only to enjoin it after it is filed.

The *Barancik* court also suggested that its ruling had "the salutary advantage of discouraging the unseemly race to the state courthouse ... while the federal court had under consideration a motion for a status quo order." *Barancik*, 489 F.2d at 935 n.5. But by hinging the applicability of § 2283 on whether the state or federal suit is commenced first, the *Barancik* rule creates a race to the courthouse of its own. *See Roth*, 583 F.2d at 533 (noting that the *Barancik* rule "merely moves the finish line"). Even worse, following *Barancik* would permit a federal court plaintiff who wins this race, to "unilaterally ... nullify the effectiveness of" the Act with the "mere application for injunctive relief." *Standard Microsystems*, 916 F.2d at 62; *see also* Diane P. Wood, *Fine-tuning Judicial Federalism: A Proposal for Reform of the Anti-Injunction Act*, 1990 B.Y.U. L. Rev. 289, 312 (1990) (arguing that the *Barancik* court's result does not seem "in line with the statute" because the "Act would become too easy to evade in many cases if the timing of the request for the injunction became the dispositive factor").

Although we recognize the legitimacy of the concerns raised by the Seventh Circuit in *Barancik*, the exception it created to meet these concerns poses its own problems. Moreover, even if application of the *Barancik* holding would result in better policy in the eyes of some, this is not the course Congress has chosen in the Act; views as to good policy cannot overcome a clear statutory directive. *See, e.g., Sigmon Coal Co., Inc. v. Apfel*, 226 F.3d 291, 308 (4th Cir. 2000) (noting that "our job is to determine the meaning of the statute passed by Congress, not whether wisdom or logic suggests that Congress could have done better"). Therefore, we hold that the Act's prohibition on enjoining state court proceedings applies to any such proceeding

pending at the time the federal court *acts* on the request for injunctive relief, regardless of when the state court action was filed. Since the California proceeding was clearly pending at the time the district court acted on Denny's request for injunctive relief, the Act bars the relief Denny's requested.

Because the Act rendered the district court powerless to issue any of the relief Denny's requested, *see supra* n.8, its complaint should have been dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Accordingly, we vacate the judgment of the district court dismissing for lack of personal jurisdiction and remand with instructions to enter an order dismissing the case for failure to state a claim upon which relief can be granted.[10]

IV.

For the foregoing reasons, the judgment of the district court is

VACATED AND REMANDED.

WILLIAMS, Circuit Judge, concurring in part and concurring in the judgment in part:

At the outset, I concur completely in the majority's jurisdictional analysis. Having concluded that the district court had personal jurisdiction over the California state officials, this case requires our court to weigh in on two separate issues related to the Anti-Injunction Act that have divided the Courts of Appeals. I concur in the opinion of the court that the plain language of the Anti-Injunction Act bars an injunction in this case, unless one of its exceptions applies. In addition, because I believe that the judgment of

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[10] Given our holding, we need not address the Commissioner's contention that *Younger* abstention also compels dismissal of Denny's suit.

the court is compelled by our prior decision in *Employers Resource Management Co. v. Shannon*, 65 F.3d 1126 (4th Cir. 1995), I concur in the judgment that ERISA does not authorize an injunction of state court proceedings in this case. I write separately to highlight some of my concerns with these latter two issues.

First, I address the application of the Anti-Injunction Act (AIA) to state proceedings filed after federal proceedings are filed. The plain language of the Anti-Injunction Act prohibits injunctions "to stay proceedings in a State court." 28 U.S.C.A. § 2283 (West 1994). Nothing in this language limits the prohibition to state actions filed before the federal action is filed. Moreover, interpreting a predecessor statute to the AIA, the Supreme Court held in *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922), that the predecessor statute barred the federal court from enjoining a state court action that was filed *after* the commencement of the federal court action. As my colleagues note, *ante* at 14, we may not disregard the plain language of a statute unless a literal application would lead to absurd results or would thwart the statute's obvious purpose. Although I agree with many of the concerns expressed by then-Judge Stevens in *Barancik v. Investors Funding Corp.*, 489 F.2d 933 (7th Cir. 1973), especially the fear that our holding will pressure federal courts to grant temporary restraining orders, *see id.* at 938, I do not believe that applying the AIA to later-filed state court proceedings leads to absurd results or thwarts the obvious purpose of the AIA. Accordingly, I agree with my colleagues that we are bound by the plain language of the statute and that the plain language of the AIA bars an injunction in this case, unless one of its exceptions applies.*

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* I note that the facts of this case suggest a particularly troubling scenario. For example, even had Denny's requested a temporary restraining order against the filing of state court proceedings, the district

Second, application of the AIA's "expressly authorized by Act of Congress" exception to this case also presents some very interesting issues. We addressed a similar issue in *Employers Resource Management*, and held that "§ 1132(a) of ERISA does not operate as an automatic exception to the Anti-Injunction Act." *Employers Res. Mgmt.*, 65 F.3d at 1129. Because the Supreme Court in *Mitchum v. Foster*, 407 U.S. 225 (1972), held that 42 U.S.C.A. § 1983 was an expressly authorized exception to the AIA, we compared ERISA to § 1983. *Id.* at 1131. In making this comparison, we employed broad language that addressed ERISA as a whole. For example, we concluded that ERISA did not "create[] the type of 'unique' federal right or remedy that was at issue in *Mitchum* 's consideration of 42 U.S.C. § 1983" and that "[a] distrust of state courts did not play the same role in the development of ERISA as it did in the formation of § 1983." *Id.* Thus, we concluded that "[t]he ERISA statutory scheme is not sufficiently analogous to the scheme developed under § 1983 for us to extend *Mitchum* into the ERISA setting." *Id.*

Despite this broad language, other passages from our opinion reflect a belief that ERISA might be an "expressly authorized" exception to the AIA, and for that reason I do not join footnote 9 of the majority's opinion. For example, we repeatedly mentioned that ERISA is not an "automatic exception" to the AIA—the negative inference being that ERISA could be an exception under certain circumstances. *See id.* at 1129, 1132, 1137. In addition, in distinguishing a case from another circuit, we noted that "[e]ven § 1132 of

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court likely would have denied it based on the erroneous belief that it lacked personal jurisdiction. If so, the California state officials still would have been able to file their state court action, which we now hold cannot be enjoined by the federal court. In such a circumstance, the applicability of the AIA hinges entirely on the fortuity of the district court's erroneous procedural ruling.

ERISA, *which appears to create an exception to the Anti-Injunction Act*, could not be read as making *the mere filing of a state court proceeding* a violation of ERISA." *Id.* at 1133 (emphases added). Although the opinion is not entirely clear, one possible exception could exist where a plan fiduciary could show that it would be unable to carry out its responsibilities under ERISA if it were subjected to state laws. *Cf. id.* at 1132 (noting that "ERM has never suggested that it will be unable 'to carry out its responsibilities under ERISA' if it is subjected to Virginia insurance law"). If ERISA was an "expressly authorized" exception to the AIA in such circumstances, then the AIA likely would not apply to this case as Denny's has argued emphatically that it will be unable to carry out its responsibilities under ERISA if it is subjected to California labor law.

Were we writing on a clean slate, I might conclude that ERISA should be an exception to the AIA in all cases where the plan fiduciary seeks injunctive relief against state officials who are trying to impose state law or regulations on an ERISA plan. That option, however, is not available to us after *Employers Resource Management*, because in that case, Virginia was attempting to apply its insurance laws to an ERISA plan. Thus, after *Employers Resource Management*, we are left with binding circuit precedent holding that at least one ERISA case is subject to the strictures of the AIA.

Because of the same conflicting passages that are quoted above, however, I do not believe that *Employers Resource Management* answers the question of whether its holding necessarily extends to all ERISA cases (i.e., a categorical approach), or if instead we should apply a case-by-case approach to determine if ERISA is an "expressly authorized" exception under the circumstances of each particular case. I note that the majority in footnote 9 implicitly has adopted a categorical approach and extended

Employers Resource Management to all ERISA cases. *See ante* at 12 n.9; *see also Total Plan Services, Inc. v. Texas Retailers Assoc., Inc.*, 925 F.2d 142 (5th Cir. 1991) (holding that § 1132(a)(3), which authorizes federal courts to "enjoin any act ... which violates" ERISA, is not an "expressly authorized" exception to the AIA because "the mere filing of a state court proceeding [is not] a 'violation' of ERISA"). Some other circuits implicitly have adopted a case-by-case approach. *See General Motors v. Buha*, 623 F.2d 455 (6th Cir. 1980) ("When a district court finds that an action in state court will have the effect of making it impossible for a fiduciary of a pension plan to carry out its responsibilities under ERISA, the anti-injunction provisions of § 2283 do not prohibit it from enjoining the state court proceedings."); *United States Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3d Cir. 1989) (distinguishing *Buha* on its facts based on the "important factual differences between that case and this one—particularly in the type of plan and the nature of the relationship between the federal plaintiffs and their insurer").

The Supreme Court has not spoken clearly as to whether the AIA should be interpreted using a categorical or a case-by-case approach. *See Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977). In *Vendo*, the Court held that § 16 of the Clayton Act did not carve out an exception to the AIA. In a plurality opinion, then-Justice Rehnquist, joined by Justice Stewart and Justice Powell, focused solely on § 16 of the Clayton Act—its text and legislative history—to determine that the "expressly authorized" exception did not apply. *Id.* at 631-41 (Rehnquist, J.). After recognizing that the plain language of § 16 of the Clayton Act, like ERISA, authorized injunctions, but did not mention state-court proceedings, Justice Rehnquist noted that

> in *Mitchum*, absence of express language authorization for enjoining state-court proceedings

> in § 1983 actions was cured by the presence of relevant legislative history. In this case, however, neither the respondents nor the courts below have called to our attention any similar legislative history in connection with the enactment of § 16 of the Clayton Act.

Id. at 634. Thus, he concluded, § 16 of the Clayton Act is never an exception to the AIA. *Id.* at 641 (noting that to be an "expressly authorized" exception to the AIA, "the Act countenancing the federal injunction must necessarily interact with, or focus upon, a state judicial proceeding. Section 16 of the Clayton Act ... is clearly not such an Act."). This "categorical" approach mirrors the approach taken by the Court in *Mitchum v. Foster*, 407 U.S. 225, 238-43 (1972), when it held that § 1983 fell within the "expressly authorized" exception.

In contrast, Justice Blackmun, joined by Chief Justice Burger, in his concurrence in the result in *Vendo*, applied a case-by-case approach. *See Vendo*, 433 U.S. at 643 (Blackmun, J., concurring in the result) (noting that he "do[es] not agree that [it] is invariably the case" that § 16 of the Clayton Act is not an "expressly authorized" exception to the AIA). In Justice Blackmun's view, § 16 of the Clayton Act is an exception to the AIA if the "currently pending state-court proceedings ... are themselves part of a 'pattern of baseless, repetitive claims' that are being used as an anticompetitive device, all the traditional prerequisites for equitable relief are satisfied, and the only way to give the antitrust laws their intended scope is by staying the state proceedings." *Id.*

Justice Stevens, joined by Justice Brennan, Justice White, and Justice Marshall, dissented. Justice Stevens would have held that § 16 of the Clayton Act "is an Act of Congress which expressly authorizes an injunction against a state-court proceeding which violates the antitrust laws"

even though there is no mention of state-court proceedings or the AIA in § 16. *Id.* at 654 (Stevens, J., dissenting).

I note that the categorical approach employed by Justice Rehnquist in *Vendo* has much to recommend it. A categorical approach seems to be more consistent with the statutory language of the AIA, which speaks of "Act[s] of Congress" rather than the circumstances of particular cases. Moreover, a case-by-case approach likely would be difficult to administer. For example, every plan fiduciary would undoubtedly claim that it would be unable to carry out its responsibilities under ERISA if the state court proceeding continued, thus, in effect creating an exception for all ERISA fiduciary cases.

In any event, we need not resolve that issue here because under either approach ERISA would not be an "expressly authorized" exception to the AIA in the circumstances of this case. If we apply a categorical approach, then we are hemmed in by our prior decision in *Employers Resource Management.* If, instead, we apply a case-by-case approach, the parties have not pointed us to anything in the text or legislative history of ERISA indicating that Congress intended to carve-out this type of case from the run-of-the-mill ERISA case. Accordingly, I concur in the majority's judgment that ERISA does not authorize the requested relief in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA,
SPARTANBURG DIVISION

DENNY'S, INC., IN ITS FIDUCIARY CAPACITY AS PLAN ADMINISTRATOR; DENNY'S, INC., VACATION PAY PLAN; ANDREW F. GREEN, IN HIS CAPACITY AS TRUSTEE OF THE DENNY'S, INC. EMPLOYEE BENEFITS TRUST; AND DENNY'S, INC. EMPLOYEE BENEFITS TRUST,
PLAINTIFFS,

VS.

CHUCK CAKE, IN HIS CAPACITY AS ACTING DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS AND ARTHUR LUJAN, IN HIS CAPACITY AS THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA,
DEFENDANTS

CA No. 7:02-2968-20.

[FILED]
[FEB 27, 2003]
[LARRY W. PROPES, CLERK]
[U.S. DISTRICT COURT]

[ENTERED]
[FEB 27, 2003]

ORDER

This matter is before the court on the defendants' motion to dismiss pursuant to Rule 12(b)(2), (3), and (6) of the Federal Rules of Civil Procedure. For the reasons set forth below, the court grants the defendants' motion to dismiss.

I. PROCEDURAL AND FACTUAL BACKGROUND

Denny's, Inc. ("Denny's") is a national restaurant chain that employs approximately thirty thousand people. Denny's, with its principal place of business in Spartanburg, South Carolina, maintains and administers the Denny's, Inc. Vacation Pay Plan ("Plan") and the Denny's, Inc. Employee Benefits Trust ("Trust"). Andrew F. Green ("Green") is the trustee of the Trust. The Plan and the Trust are located and administered in South Carolina.

The Plan provides that a salaried employee cannot use vacation days until after the completion of six months of continuous service with Denny's. (Compl. at 6.) Similarly, an hourly employee cannot use vacation days until the completion of one year of continuous service. (*Id.* at 6-7.) The plaintiffs allege that the Plan and the Trust are governed by the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C § 1001, *et seq.* California Labor Code Section 227.3 is in conflict with the Plan's vacation policy. California Labor Code Section 227.3 states:

> Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

Cal. Lab. Code § 227.3.

On July 11, 2001, the plaintiffs received a letter from Susan A. Dovi ("Dovi"), a staff attorney working for defendants Chuck Cake ("Cake"), Acting Director of the

California Department of Industrial Relations, and Arthur Lujan ("Lujan"), Labor Commissioner of the State of California, in which Dovi states the Plan and the Trust are not employee welfare benefit plans covered under ERISA and that they violate section 227.3 of the California Labor Code. (Compl. at 6.) In the July 11, 2001, letter Dovi further states that the California Department of Labor Standards Enforcement intends to file a lawsuit "seeking unpaid vacation benefits and penalties for all former California employees of Denny's for a four-year period of time." (*Id.*)

On September 6, 2002, the plaintiffs filed the instant lawsuit seeking a declaratory judgment and injunctive relief. Specifically, the plaintiffs ask the court to declare that the Plan and the Trust are governed by ERISA and that ERISA preempts section 227.3.[11] (Compl. at 10.) In addition, the plaintiffs seek preliminary and permanent injunctive relief barring the defendants from taking action to enforce section 227.3 against Denny's. (*Id.*) On September 24, 2002, the defendants filed a claim against Denny's in California state court seeking to enforce section 227.3.

II. LEGAL DISCUSSION

Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the defendants move to dismiss for lack of personal jurisdiction. Specifically, the defendants challenge the application of 29 U.S.C. § 1132(e)(2) as the basis for personal jurisdiction. "[C]ourts address issues relating to

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[11] In addition, the plaintiffs ask the court to declare that a prior order of the United States District Court in *California Hosp. Ass'n v. Henning*, 569 F. Supp. 1544 (C.D. Cal. 1983), precludes the defendants from enforcing section 227.3 and from asserting that ERISA does not preempt section 227.3. Because the court's resolution of the instant motion does not involve the plaintiffs' request with regard to *Henning*, the court merely notes this prayer for relief.

personal jurisdiction before reaching the merits of the plaintiff[s'] claims." *Sadighi v. Daghighfekr*, 36 F. Supp. 2d 267, 270 (D.S.C. 1999). When personal jurisdiction is challenged by the defendant, a plaintiff has the burden of showing that jurisdiction exists. *See In re Celotex Corp.*, 124 F.3d 619, 628 (4th Cir. 1997). "When a district court decides a pretrial personal jurisdiction dismissal motion without an evidentiary hearing, [p]laintiffs need only prove a *prima facie* case of personal jurisdiction." *Sadighi*, 36 F. Supp. 2d at 270. In making this determination, the court looks to the complaint and any supporting affidavits. *See In re Celotex Corp.*, 124 F.3d at 628. Furthermore, the court will construe factual allegations in favor of the plaintiff. *See id.* While most personal jurisdiction challenges involve a factual analysis, the personal jurisdiction challenge in this case turns on a legal determination.

The analysis begins with ERISA § 502(e)(2), which states:

> Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

29 U.S.C. § 1132(e)(2). The interpretation of this statute is not in dispute.[12] Instead, the question before the court is

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[12] In *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 626 (4th Cir. 1997), the United States Court of Appeals for the Fourth Circuit states: "Where ... Congress has authorized nationwide service of process ... so long as the assertion of jurisdiction over the defendant is compatible with due process, the service of process is sufficient to establish the jurisdiction of the federal court over the person of the defendant." In this context, due process is satisfied if an exercise of personal jurisdiction would not be of "such extreme inconvenience or unfairness as would outweigh the congressionally articulated policy of allowing the assertion

whether ERISA § 502(e)(2) applies to this case. If it does not, it seems apparent that the court cannot exercise personal jurisdiction over the defendants.[13]

As the United States Court of Appeals for the Sixth Circuit noted, "[p]ersonal jurisdiction under [ERISA § 502(e)(2)] depends on subject matter jurisdiction under [ERISA § 502(a)(3)]." *NGS Am., Inc. v. Jefferson*, 218 F.3d 519, 524 (6th Cir. 2000).[14] In other words, ERISA § 502(e)(2) applies and therefore personal jurisdiction exists only if the plaintiffs' claims fall within ERISA's civil enforcement provision, specifically ERISA § 502(a)(3).[15] ERISA § 502(a)(3) states:

> A civil action may be brought—by a ... fiduciary ... to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or ... to obtain other appropriate equitable relief ... to redress such violations or ... to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1132(a)(3). Assuming for this analysis the plaintiffs are ERISA fiduciaries, the question becomes whether the requested injunctive and declaratory relief falls

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of *in personam* jurisdiction." *Id.* at 627. In addition, judicial efficiency is considered in this analysis. *See id.*

[13] Without the benefit of ERISA § 502(e)(2), the plaintiffs are forced to satisfy the traditional two-prong test for personal jurisdiction. *See* generally *Int'l Shoe Co v. Washington*, 326 U.S. 310 (1945). Because there is nothing in the record to even suggest the plaintiffs could establish the defendants had minimum contacts with South Carolina, the court declines to request additional briefing on this issue.

[14] As in *Jefferson*, the plaintiffs assert a cause of action pursuant to ERISA § 502(a)(3). (Compl. at 3.)

[15] ERISA's civil enforcement provision is ERISA § 502(a). ERISA § 502(a) creates "a series of express causes of action in favor of participants, beneficiaries, and fiduciaries of ERISA-covered plans, as well as the Secretary of Labor." *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 (1983).

within ERISA § 502(a)(3). The plaintiffs, as ERISA fiduciaries, are requesting the court to declare that section 227.3 is preempted by ERISA and to therefore enjoin state officials from enforcing the provision. The question is whether such an action falls within ERISA § 502(a)(3).[16] The court finds that it does not.

An analysis of whether the plaintiffs' claims fall within ERISA § 502(a)(3) begins with a discussion of subject matter jurisdiction. ERISA § 514 states, subject to exceptions, that all state laws which relate to an ERISA plan are preempted by ERISA. *See* 29 U.S.C. § 1144. If the plaintiffs raise ERISA § 514 as a defense in the California state action, the plaintiffs will not be able to remove the case to federal court. *See Darcangelo v. Verizon Communications, Inc.*, 292 F.3d 181, 186-87 (4th Cir. 2002) (holding that the doctrine of complete preemption, not ERISA § 514, gives rise to removal jurisdiction). Therefore, the question is whether raising the ERISA § 514 defense in the form of a declaratory judgment action changes this analysis. Specifically, the court must determine whether it has subject matter jurisdiction over the case and personal jurisdiction over the defendants.

We start with a review of the United States Supreme Court's opinion in *Franchise Tax Board.* In *Franchise Tax Board*, the Franchise Tax Board of California filed suit in state court against the Construction Laborers Vacation Trust for Southern California ("CLVT") to enforce certain California tax provisions and alleged a claim pursuant to the California Declaratory Judgment Act seeking a declaration that ERISA did not preempt the California tax laws at

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[16] While the court notes that the plaintiffs ask the court to declare the Plan and the Trust are an employee welfare benefit plan under ERISA, the court finds that the crux of the plaintiffs' requested declaratory judgment relief is the issue of preemption and, more specifically, the application of ERISA § 514.

issue. 463 U.S. at 5-7. In that case, the CLVT was "unquestionably an employee welfare benefit plan" under ERISA. *Id.* at 5. The case was removed to federal court, and on appeal the United States Supreme Court determined that removal jurisdiction did not exist. *See id.* at 4.

The Supreme Court noted "the propriety of removal turns on whether the case falls within the original 'federal question' jurisdiction of the United States" and stated that anticipation of a federal defense does not confer federal question jurisdiction. *Id.* at 8, 10. Because both of the plaintiff's causes of action arose under state law, the Court determined that "original federal jurisdiction is unavailable unless it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims, or that one or the other claim is 'really' one of federal law." *Id.* at 13. Discussing the declaratory judgment cause of action, the Court stated: "Whereas the question of federal pre-emption is relevant to appellant's first cause of action only as a potential defense, it is a necessary element of the declaratory judgment claim." *Id.* at 14. The Court went on to state that "it is clear on the face of its well-pleaded complaint that [the Franchise Tax Board] may not obtain the relief it seeks in its [declaratory judgment] cause of action ... without a construction of ERISA and/or an adjudication of its pre-emptive effect and constitutionality—all questions of federal law." *Franchise Tax Board*, 463 U.S. at 14

After holding that the doctrine set forth in *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950), applied to state declaratory judgment actions, the Court applied *Skelly Oil Co.* to the facts of the case. *Franchise Tax Board*, 463 U.S. 15-22. "*Skelly Oil* has come to stand for the proposition that 'if, but for the availability of the declaratory judgment procedure, the federal claim would arise only as a defense to

a state created action, jurisdiction is lacking." Id. at 16 (internal quotation omitted).

In a footnote, the Court went on to quote dicta from its opinion in *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 248 (1952):

> Where the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened state court action, it is the character of the threatened action, and not of the defense, which will determine whether there is federal-question jurisdiction in the District Court. If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim. This is dubious even though the declaratory complaint sets forth a claim of federal right, if that right is in reality in the nature of a defense to a threatened cause of action. Federal courts will not seize litigations from state courts merely because one, normally a defendant, goes to federal court to begin his federal-law defense before the state court begins the case under state law.

Franchise Tax Board, 463 U.S. at 16 n.14 (quoting *Wycoff*, 344 U.S. at 248.) "Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question." *Id.* at 19.

However, in applying the rule of *Skelly Oil* to the facts in *Franchise Tax Board*, the Court stated:

> There are good reasons why the federal courts should not entertain suits by the States to declare the validity of their regulations despite possibly

> conflicting federal law. States are not significantly prejudiced by an inability to come to federal court for a declaratory judgment in advance of a possible injunctive suit by a person subject to federal regulation. They have a variety of means by which they can enforce their own laws in their own courts, and they do not suffer if the pre-emption questions such enforcement may raise are tested there. The express grant of federal jurisdiction in ERISA is limited to suits brought by certain parties, ... as to whom Congress presumably determined that a right to enter federal court was necessary to further the statute's purposes. It did not go so far as to provide that any suit *against* such parties must also be brought in federal court when they themselves did not choose to sue. The situation presented by a State's suit for a declaration of the validity of state law is sufficiently removed from the spirit of necessity and careful limitation of district court jurisdiction that informed our statutory interpretation in *Skelly Oil* ... to convince us that, until Congress informs us otherwise, such a suit is not within the original jurisdiction of the United States district courts. Accordingly, the same suit brought originally in state court is not removable either.

Id. at 21-22. While this language is not particularly relevant because a state is not the plaintiff in the case currently before the court, it leads to the Court's discussion of the doctrine of complete preemption.

"It is long settled law that a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law." *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). A federal defense does not give rise to federal question jurisdiction and therefore

cannot be the basis for removal. *See id.* Federal preemption is ordinarily a federal defense. *See id.* Congress, however, can choose to "completely preempt a particular area [so] that any civil complaint raising this select group of claims is necessarily federal in character." *Id.* at 63-64. Complete preemption forms an exception to the well-pleaded complaint rule. *See Lancaster v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 958 F. Supp. 1137, 1143 (E.D. Va. 1997) ("[T]he doctrine of 'complete preemption' ... permits removal of an otherwise non-federal action if the asserted state claims conflict with a federal statutory scheme.").

In the context of ERISA, the doctrine of complete preemption dictates that "any state action coming within the scope of § 502(a) of ERISA would be removable to federal district court, even if an otherwise adequate state cause of action were pleaded without reference to federal law." *Franchise Tax Board*, 463 U.S. at 24; *see also Metropolitan Life*, 481 U.S. at 66. In *Franchise Tax Board*, the Court held that the Franchise Tax Board's action for declaratory judgment relief did not fall under ERISA § 502(a) and therefore was not removable on the basis of complete preemption. This conclusion was based specifically on the language of ERISA § 502(a). For these reasons, the Court found that it lacked removal jurisdiction and remanded the case to state court.

In an opinion issued on the same day, the Supreme Court in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 92 (1983), reviewed declaratory judgment actions by various employers against state agencies seeking a declaration that the state Human Rights Law was preempted by ERISA. In doing so, the Court distinguished *Franchise Tax Board* by stating:

> The Court's decision today in *Franchise Tax Board v. Construction Laborers Vacation Trust* ... does

> not call into question the lower court's jurisdiction to decide these cases. Franchise Tax Board was an action seeking a declaration that state laws were *not* preempted by ERISA. Here, in contrast, companies subject to ERISA regulation seek injunctions against enforcement of state laws they claim *are* preempted by ERISA, as well as declarations that those laws are pre-empted.

Id. at 96 n. 14. The Court also stated:

> It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights. A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is preempted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.

Id. (internal quotation omitted).

In *Provident Life & Accident Ins. Co. v. Waller*, 906 F.2d 985, 991 (4th Cir. 1990), the Fourth Circuit stated "[w]e read *Franchise Tax Board* and *Delta Air Lines* to provide at a minimum, ... for federal question jurisdiction under ERISA where the issue presented, whether it be the creation of federal common law or the interpretation of a specific ERISA provision, is of central concern to the statute." *Id.* (internal citation and quotation omitted). In other words, the Fourth Circuit determined that the court had jurisdiction over the claims in the case even though they fell outside of ERISA's civil enforcement provision because ERISA's federal common law establishes 'arising under' jurisdiction in limited circumstances. *See id. But see Darcangelo*, 292 F.3d at 187 ("[W]hen ERISA is simply asserted as a defense to a state law claim, the state law

claim is not converted into a federal claim and there is no federal question [jurisdiction]."). *See generally Metropolitan Life*, 481 U.S. at 66 (holding that claims which fall within ERISA § 502(a) are removable to federal court).

Assuming the court has subject matter jurisdiction based on 28 U.S.C. § 1331 and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, rather than ERISA § 502(a), the court is still faced with the issue of personal jurisdiction.[17] The answer to this question depends solely on whether the plaintiffs' claims fall within ERISA's civil enforcement provision. As fiduciaries, the plaintiffs are proper parties to bring suit under ERISA § 502(a)(3). Further, in addition to providing for injunctive relief, ERISA § 502(a)(3) "has been interpreted as creating a cause of action for a declaratory judgment." *Jefferson*, 218 F.3d at 529 (internal quotation omitted). The focus, therefore, is on the nature of the relief and the question is whether a suit based on ERISA § 514 enforces ERISA. The court in *Jefferson* found that it did not, and the court agrees.

"On its face, [ERISA § 514] does not prohibit filing a state law claim preempted by ERISA in state court, nor does it seem readily enforceable by injunctive or declaratory relief." *Id.* As the *Jefferson* court notes, a variety of provisions of ERISA "lend themselves to 'enforcement' in an action brought under [ERISA § 502(a)(3)] because they place specific duties on specific persons. [ERISA § 514], by contrast, does not." *Id.* (internal quotation omitted). The *Jefferson* court goes on to state:

> The ERISA provision that [the plaintiff] purports to be enforcing is [ERISA § 514], a provision that

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[17] The defendants also cite *Int'l Assoc. of Entrepreneurs of America v. Angoff*, 58 F.3d 1266 (8th Cir. 1995), in support of their motion to dismiss. Although thought provoking, Angoff is not directly relevant to whether the plaintiffs' claims fall within ERISA's civil enforcement provision, the lynchpin of personal jurisdiction in this case.

> this court has determined does not create a federal cause of action itself. It would thus be anomalous if an action to enforce [ERISA § 514] were a federal cause of action [under ERISA § 502(a)]. Given that [the defendant] bringing a state court suit does not violate [ERISA § 514], [the plaintiff's] action to block that suit cannot enforce [ERISA § 514]. .... [The defendant] has not violated the Plan or ERISA by merely filing suit, so there is nothing for [the plaintiff] to enforce under the aegis of [ERISA § 502(a)(3)]. ... If ERISA does not prohibit the *filing* of preempted claims in state court, then injunctive and declaratory relief against those state court proceedings is not available under ERISA.

Id. at 529-30. *But see Thiokol Corp. v. Dep't of Treasury, State of Michigan, Revenue Div.*, 987 F.2d 376, 380 (6th Cir. 1993) (holding that a claim by plaintiffs for "injunctive or declaratory relief to prevent future collection" of tax levies falls under ERISA's civil enforcement provision).

Applying the *Jefferson* court's reasoning to the facts in this case leads the court to conclude that the plaintiffs' claims do not fall under ERISA § 502(a)(3). This conclusion is not changed by the fact that the plaintiffs ask both for a declaration that the Plan and the Trust are employee welfare benefit plans under ERISA and that section 227.3 is preempted. It is important to note in distinguishing *Thiokol* that the plaintiffs in this case ask for "preliminary and permanent injunctions barring Defendants from taking any action to enforce California law against Plaintiffs with regard to the Plan and the Trust." (Compl. at 10.) In *Thiokol*, the plaintiffs asked for a declaration that certain tax levies were preempted by ERISA and for an injunction prohibiting the collection of certain taxes. 987 F.2d at 378. *Thiokol* held only that the plaintiffs' claim for injunctive

relief fell under ERISA.[18] The plaintiffs in this case are not asking for an injunction against the enforcement of section 227.3 but for an injunction preventing the defendants from bringing suit against the plaintiffs. In essence, the plaintiffs are asking the court to enforce ERISA § 514, a claim which does not fall within ERISA § 502(a)(3).

The court recognizes that the facts of *Jefferson* are easily distinguishable from the facts at hand. In *Jefferson*, the plaintiff, a third-party ERISA plan administrator, in anticipation of a malpractice suit by an ERISA beneficiary, sued the beneficiary seeking a declaration that any state malpractice claims would be preempted by ERISA. In this case, the plaintiffs, in anticipation of a lawsuit to enforce a state statute, filed suit asking the court to declare that the state statute is preempted by ERISA. However, the court finds that any factual distinction does not affect the application of the *Jefferson* Court's reasoning.

The court also finds *Gulf Life Ins. Co. v Arnold*, 809 F.2d 1520 (11th Cir. 1987), to be instructive. In *Gulf Life Insurance*, after an ERISA beneficiary filed a claim for benefits, Gulf Life Insurance Company filed suit seeking a declaration with regard to its liability. In doing so, Gulf Life Insurance Company invoked ERISA's nationwide service of process provision to obtain personal jurisdiction. In reviewing personal jurisdiction, the United States Court of Appeals for the Eleventh Circuit noted that "nationwide service of process is available only if the suit is 'an action under *this subchapter*.'" *Gulf Life*, 809 F.2d at 1523. The *Gulf Life* court held that the plaintiff's declaratory judgment action was neither a suit for equitable relief nor a suit to enforce the plan or subchapter. *See id.* "The purpose

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[18] Because the Eleventh Amendment barred the suit with regard to the first part of plaintiffs' claim, the court did not reach the issue of whether that claim was brought under ERISA.

essential to section 1132(a)(3)(B) is to enforce the terms of the plan or ERISA ... ." *Id.*

"Moreover, an action to enforce means an action to compel someone to do something or not to do something, such as make contributions, that ERISA or the plan requires be done or not done." *Id.* "[C]ivil action under ERISA are limited only to those parties and actions Congress specifically enumerated in section 1132." *Id.* at 1524. The plaintiffs argue and the court agrees that the facts of *Gulf Life* are easily distinguishable from this case. However, as in *Jefferson*, the reasoning that claims must fall within ERISA's civil enforcement provision in order to be subject to ERISA § 502(e)(2) still applies.

After review, the court determines that while it may have subject matter jurisdiction over the case, it lacks personal jurisdiction over the defendants. Specifically, the court finds that ERISA § 502(e)(2) cannot be used to exercise personal jurisdiction over the defendants because the plaintiffs' claims do not fall within ERISA's civil enforcement provision. Because it is clear from the record before the court that the plaintiffs cannot establish a *prima facie* case of personal jurisdiction without ERISA § 502(e)(2), the court grants the defendants' motion to dismiss for lack of personal jurisdiction.

Therefore, it is

ORDERED that the defendants' motion to dismiss for lack of personal jurisdiction is granted.[19]

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[19] Because the court dismisses the case for lack of personal jurisdiction, the court declines to address the defendants' remaining arguments.

IT IS SO ORDERED.

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
February 27, 2003

Labor Commissioner's Office
Attn: Hipshman, Anne
Department of Industrial Relations
455 Golden Gate Ave. Fl 9
San Francisco, CA 94102-___

Advantica Restaurant Group, Inc., a Delaware Corporation

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Labor Commissioner, State of
Plaintiff(s)

vs.

Advantica Restaurant Group,
Defendant(s)

(Abbreviated Title)

No. 2002065951

Order

Motion to Stay Proceedings Granted

The Motion to Stay Proceedings was set for hearing on 01/06/2003 at 09:00 AM in Department 31 before the Honorable James A. Richman. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Plaintiff and Opposing Party Labor Commissioner, State of California; Department of Industrial Relations appeared by counsel Miles E. Locker. Defendants Dennys Corporation and Dennys Inc. appeared by counsel Mark S. Spring.

The motion was argued and submitted, and the court orders the tentative ruling affirmed as follows:

Denny's Corporation's (Formerly Known as Advantica Restaurant Group, Inc.) and Denny's Inc.'s Notice of Motion for Stay of Proceedings is GRANTED pending resolution of a related case, Denny's Inc., et al. v. Chuck Cake, et al., case number 7-02-2968-20.

Dated: 01/06/2003

/s/ James A. Richman

Judge James A. Richman

Labor Commissioner's Office
Attn: Hipshman, Anne
Department of Industrial Relations
455 Golden Gate Ave. Fl 9
San Francisco, CA 94102-___

Advantica Restaurant Group, Inc., a Delaware Corporation

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Labor Commissioner, State of Plaintiff/Petitioner(s) vs. Advantica Restaurant Group Defendant/Respondent(s) (Abbreviated Title)	No. 2002065951 Application Re: Stay Denied

IT IS ORDERED that the Plaintiff's Application Re: Lifting Stay is denied without prejudice. A noticed motion will be required.

Dated: 07/22/2003

/s/ James A. Richman
Judge James A. Richman

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-1326
CA-02-2968-7-20

FILED: MAY 7, 2004

DENNY'S, INCORPORATED, IN ITS FIDUCIARY CAPACITY AS PLAN ADMINISTRATOR; DENNY'S, INCORPORATED VACATION PAY PLAN; ANDREW F. GREEN, IN HIS CAPACITY AS TRUSTEE OF THE DENNY'S INCORPORATED EMPLOYEE BENEFITS TRUST; DENNY'S INCORPORATED EMPLOYEE BENEFITS TRUST,
PLAINTIFFS-APPELLANTS,

v.

CHUCK CAKE, IN HIS CAPACITY AS ACTING DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS; ARTHUR LUJAN, IN HIS CAPACITY AS THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA,
DEFENDANTS-APPELLEES.

AMERICAN ASSOCIATION OF RETIRED PERSONS,
AMICUS SUPPORTING APPELLEE.

ON PETITION FOR REHEARING AND REHEARING EN BANC

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the Panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel comprised of Judge Widener, Judge Williams and Judge Motz.

For the Court,

/s/ Patricia S. Connor
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA,
SPARTANBURG DIVISION

DENNY'S, INC., IN ITS FIDUCIARY CAPACITY AS PLAN ADMINISTRATOR; DENNY'S, INC., VACATION PAY PLAN; ANDREW F. GREEN, IN HIS CAPACITY AS TRUSTEE OF THE DENNY'S, INC. EMPLOYEE BENEFITS TRUST; AND DENNY'S, INC. EMPLOYEE BENEFITS TRUST,
PLAINTIFFS,

VS.

CHUCK CAKE, IN HIS CAPACITY AS ACTING DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS AND ARTHUR LUJAN, IN HIS CAPACITY AS THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA,
DEFENDANTS

CA No. 7:02-2968-20.

[FILED]
[MAY 27, 2004]
[LARRY W. PROPES, CLERK]
[U.S. DISTRICT COURT]

[ENTERED]
[MAY 27, 2004]

ORDER

This matter is before the court on remand from the United States Court of Appeals for the Fourth Circuit. On April 12, 2004, the Fourth Circuit vacated the court's order granting the defendants' motion to dismiss for lack of personal jurisdiction. *See Denny's Inc. v. Cake*, No. 03-1326,

2004 WL 765022, at *5 (4th Cir. Apr. 12, 2004). The Fourth Circuit also remanded for entry of an order dismissing the complaint for failure to state a claim upon which relief can be granted. *Id.* at *9 (citing Fed. R. Civ. P. 12(b)(6)). Therefore, it is

ORDERED that the complaint is dismissed for failure to state a claim.

IT IS SO ORDERED.

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
May 27, 2004

28 U.S.C. § 2283

§ 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

29 U.S.C. § 1001

§ 1001. Congressional findings and declaration of policy

* * *

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

* * *

29 U.S.C. § 1002

§ 1002. Definitions

For purposes of this subchapter:

* * *

(16) (A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

* * *

(21) (A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with

respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this subchapter, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

* * *

29 U.S.C. § 1104

§ 1104. Fiduciary duties

(a) Prudent man standard of care.

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

* * *

29 U.S.C. § 1132 (West 1999 & Supp. 2004)

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action.

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), or (7) of subsection (c) of this section or under subsection (i) or (*l*) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021 of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection; or

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a

fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

* * *

(e) Jurisdiction.

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

* * *

29 U.S.C. § 1144

§ 1144. Other laws

(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt

under section 1003(b) of this title. This section shall take effect on January 1, 1975.

* * *

California Labor Code § 203

§ 203. Failure to make payment within required time; penalty; employee avoiding payment; limitation of actions.

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

California Labor Code § 227.3

§ 227.3. Vested vacation wages; payment upon termination

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer

policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.